AG Contract No.: KR 04-1224TRN ADOT ECS File No.: JPA 04-086 Project: US 70 Roadway Widening

Section: MP 272

TRACS No.: H6192 01C (District Minor)

Budget Source Item No.: 73305

INTERGOVERNMENTAL AGREEMENT

BETWEEN

THE STATE OF ARIZONA AND SAN CARLOS APACHE TRIBE

2004, pursuant to THIS AGREEMENT is entered into Arizona Revised Statutes, § 11-951 through § 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and the SAN CARLOS APACHE TRIBE, ARIZONA, acting by and through its TRIBAL COUNCIL (the "Tribe").

I. RECITALS

- 1. The State is empowered by Arizona Revised Statutes, § 28-401 to enter into this Agreement and has delegated to the undersigned the authority to execute this Agreement on behalf of the State.
- 2. The Tribe is empowered by Tribal Council Resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of the Tribe.
- 3. The State and the Tribe are in mutual agreement to improve roadway within the right of way of US 70, at milepost (MP) 272, including the extension on the left turn lane on Peridot Siding which will offer east bound motorists to access the nearby Tribal Cultural Center, as shown on the Exhibit B, attached hereto and made a part hereof, hereinafter referred to as the "Project". The Tribe will contribute a one time lump sum amount of \$7,577.00 to the Project, and the State will be responsible for the remaining Project cost, estimated at \$30,305.00, as shown on the Exhibit A. The responsibility of each of the parties is defined in this Agreement under Section II. Scope of Work.

THEREFORE, in consideration of the mutual agreements expressed herein, it is agreed as follows:

Filed with the Secretary of State

Date Filed: 10/14

Secretary of Sta

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II. SCOPE OF WORK

The State will:

- a. Upon execution of this Agreement, invoice the Tribe \$7,577.00 for its participation of the Project cost which includes a fixed rate of 14% for construction engineering and administration costs.
- b. Prepare to State standards, design plans, specifications and other such documents and services required for construction bidding and construction of the Project. Coordinate with the Tribe for review of the above said documents and incorporate review comments as appropriate.
- c. Call for bids, award one or more construction contract(s) to accomplish the Project; administer same and make all payments to the contractor(s).
- d. Be responsible for any contractor claims for extra compensation due to delays or whatever reason attributable to the State.
- e. Upon completion of the Project, maintain the Project, all generally within the State's right of way as designated on the attached Exhibit B.

2. The Tribe will:

- a. Upon execution of this Agreement, remit to the State for its participation of the Project cost, in an amount of \$7,577.00, which includes a fixed rate of 14% for construction engineering and administration costs.
- b. Coordinate with the State, for the review of design plans, specifications and other such documents and services required for construction of the Project. Provide review comments as appropriate.
- c. Be responsible for any contractor claims for extra compensation due to delays or whatever reason attributable to the Tribe.

III. MISCELLANEOUS PROVISIONS

- 1. The terms, conditions and provisions of this Agreement shall remain in full force and effect until completion and reimbursements; provided herein. However, any provisions for maintenance shall be perpetual. This Agreement may be terminated by either party at any time upon sixty (60) days written notice to either party.
 - 2. This Agreement shall become effective upon filing with the Secretary of State.
 - 3. This Agreement may be cancelled in accordance with Arizona Revised Statutes Section 38-511.
 - 4. The provisions of Arizona Revised Statutes Section 35-214 are applicable to this contract.
- 5. Applicable laws and regulations of the State, the Tribe and the Federal government shall govern the rights of the parties with respect to the performance of this Agreement. In the event of any controversy which may arise out of this Agreement, the parties hereto agree to select a process acceptable to the State, the Tribe and the Bureau of Indian Affairs (BIA) to resolve such disputes. Such process may include a provision for arbitration.

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6. This Agreement is subject to all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36. The parties to this Agreement shall comply with Executive Order Number 99-4 issued by the Governor of the State of Arizona and incorporated herein by reference regarding "Non-Discrimination".

- 7. Non-Availability of Funds. Every payment obligation of the State under this contract is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of this contract, this contract may be terminated by the State at the end of the period for which the funds are available. No liability shall accrue to the State in the event this provision is exercised, and the State shall not be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.
- 8. All notices or demands upon any party to this Agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

Arizona Department of Transportation Joint Project Administration 205 S. 17th Avenue Mail Drop 616E Phoenix, AZ 85007 FAX: (602) 712 7424 San Carlos Apache Tribe Chairwoman P.O. Box 0 San Carlos, AZ 85550

9. Attached hereto and incorporated herein, is the written determination of each party's legal counsel that the parties are authorized under the laws of this state to enter into this Agreement and that the Agreement is in proper form.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

SAN CARLOS APACHE TRIBE

sal Chairwoman

STATE OF ARIZONA
Department of Transportation

Deput State Engineer, Operations

ATTEST

OPHELIA T. JAMES Tribal Secretary G:04-086-San Carlos-US70 18Aug2004-IH



ARIZONA DEPARTMENT OF TRANSPORTATION

HIGHWAYS DIVISION

CONTRACTS AND SPECIFICATIONS SERVICES

1 OF 2 March 1, 2004 SHEET: DATE:

COMBINED ESTIMATE -WEST SIDE WIDENING COMPARISON

TRACS NO. / PROJECT NO. 70 GH 272 H6192 01C / -070-A(j

GLOBE - LORDSBURG HIGHWAY TERIMINI

LOCATION US 70 - PERIDOT SIDING

ITEM

COUNTY

NET LENGTH 0.08

GROSS LENGTH 0.08

PREPARED BY MGJ

*			TRACS / PROJ NO.: 70 GH 272 H6192 01C /-U/0-A()						0,	SHEET	2 OF 2
INTE	RSECTION 0 -PERIDO	INTERSECTION IMPROVEMENTS US 70 -PERIDOT SIDING	FEMENTS						u	DATE:	03/01/04
			COMBINED ESTIMATE - WEST SIDE WIDENING COMPARISON	SST SIDE	WIDENI	NG COMP	4RISON				
					w	60 % ESTIMATE	111	ADDITIONAL	ADDITIONAL WIDENING ESTIMATE	STIMATE	
<u> </u>		N CN	ITEM DESCRIPTION	HIS	QUANTITY	UNIT PRICE	AMOUNT	מעאמוודץ	UNIT PRICE AMOUNT	AMOUNT	DELTA AMOUNT
	1 2031	2030301	ROADWAY EXCAVATION	CU.YD.	409	6.00	5654	450	6.00	22,760	52,106
	2 2030	2030901		cu.yo.	1,408	10.00	514,060	0	10.00	B	(54,140)
<u>L</u>		2070001	LIATIVE	M.GAL.				10	11.00	S110	5110
	4 3030	3030022	E CLASS 2	CU.YD.				96	25.00	52,400	52,400
		4040111	BITUMINOUS TACK COAT	TON				0	300.00	S	S
	6 AD40	4040116	APPLY BITUMINOUS TACK COAT	HOUR				0	300.00	20	Sn
	7 4050		ASPHALTIC CONCRETE (MISCELLANEOUS STRUGTURAL)	TON				77	65.00	\$2,005	55,005
	8 4130		ASPHALTIC CONCRETE (ASPHALT-RUBBER)	TON				64	24.00	51,536	51,535
	9 413(4130042	ASPHALT RUBBER MATERIAL (FOR AR-AC)	NOT				ග	290.00	51,740 (51,740
	10 413	4130044	MINEFAL ADMIXTURE (FOR AR-AG)	NOT				*	90.00	280	290
	11 701	7010001	MAINTENANCE AND PROTECTION OF TRAFFIC	EACH	1	20,000,00	520,000	-	30,000.00	230,000	510,000
	12 703	7030000	SIGNING	HUS.J	1	2,000,00	000"25	1	2,500.00	22,500	5500
-	13 805	8050003	SEEDING (CLASS II)	ACRE				-	2,580.00	52,500	52,500
	14 610	8101013	EROSION CONTROL	LSUM	+-	1,000.00	51,000	7-	2,000.00	\$2,000	51,000
	15 913	9130007	RIPRAP (DUMPED) (D50=6")	cu.yo.	82	55,00	53,575	55	55.00	53,575	20
<u> </u>	16 924	9240170	CONTRACTOR QUALITY CONTROL	LSUM	~	1,500.00	51,500	+	2,250.00	52,250	5750
<u></u>	17 925	9250001	CONSTRUCTION SURVEYING AND LAYOUT	LSUM	1	1,500.00	51,500	-	3,000.00	23,000	51,500
<u> </u>			ROADWAY ITEMS SUBTOTAL				.BE0' <i>LLS</i>				\$25,097
			CONSTRUCTION ENGINEERING (15%)				\$11,556				53,755
			ROADWAY ITEMS TOTAL				Sag,534*				S20,862
APL APL			RESERVATION ACCESS FEE (5%)				\$4,430				51,443
-080 -											
) 1			WIDENING PROJECT TOTAL (ADDITIONAL COST)								Saciaes
			69% PROJECT TOTAL								593,024
			NTOT TOHORD BEN								TEL PERVE
			קטיאי ואקאון נוינו								5727,325

Nate: Values denoted by * represent 60% Design Submittal Totals

Exhibit B

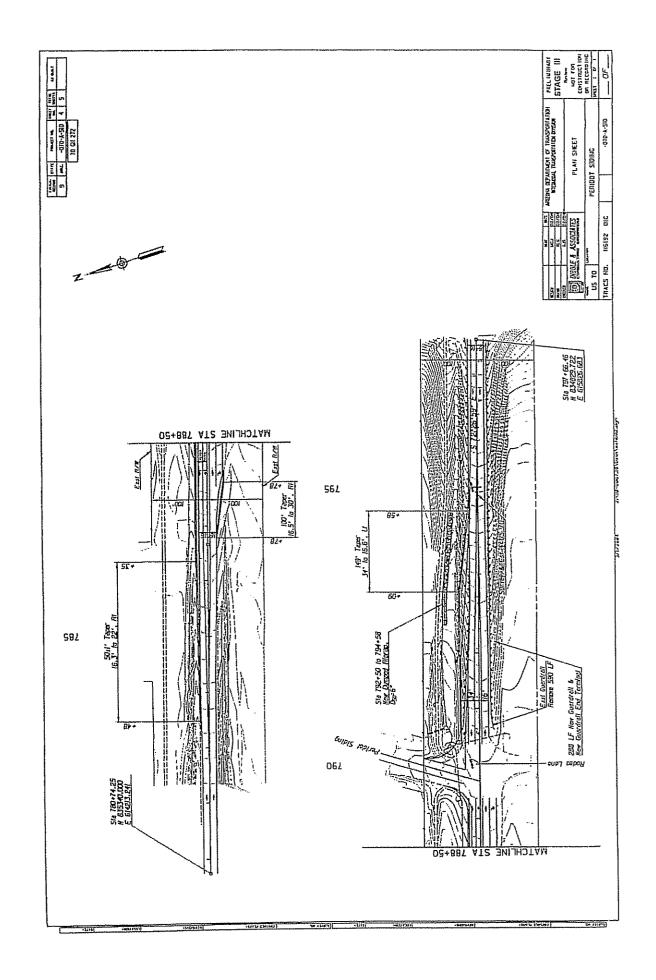
STATE OF ARIZONA
DEPARTMENT OF TRANSPORTATION
HIGHWAYS DIVISION

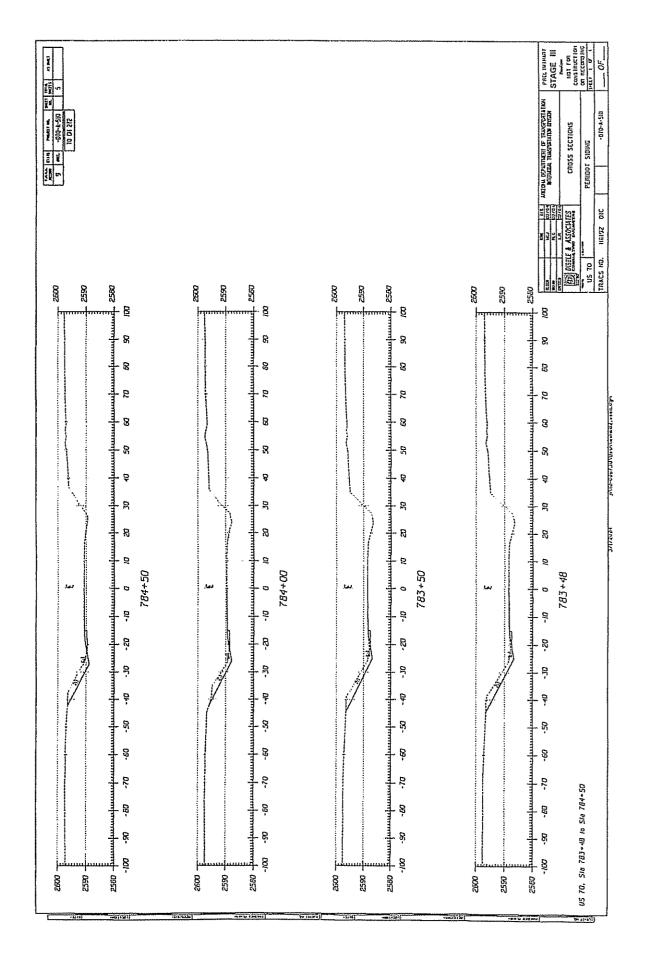
STATE HIGHWAY
GLOBE - LORDSBURG HIGHWAY
U-070-A-510
70 GH 272



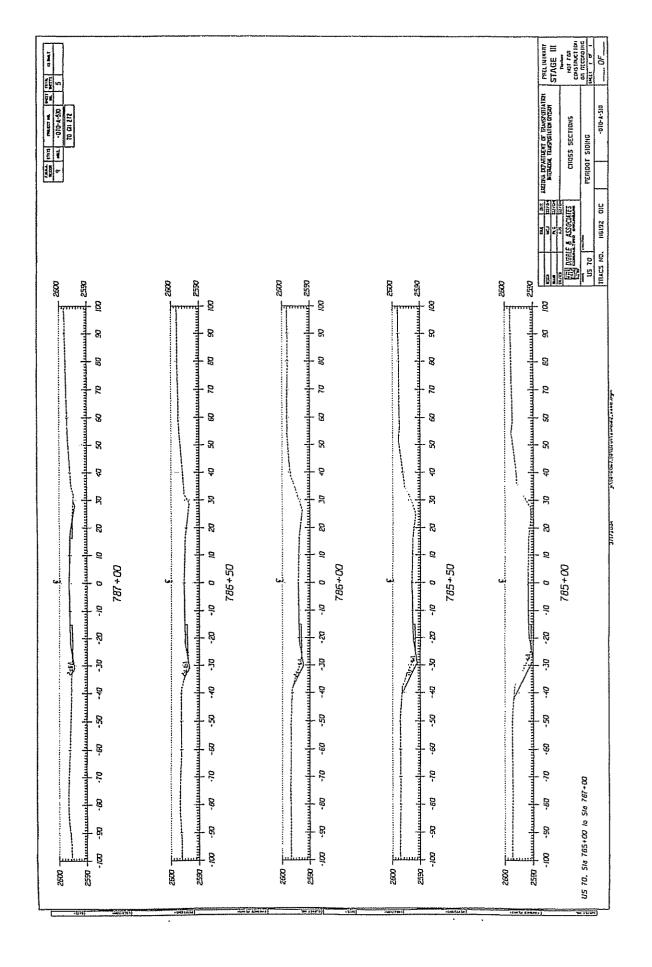
INTERSECTION WIDENING STUDY ROADWAY CROSS SECTIONS

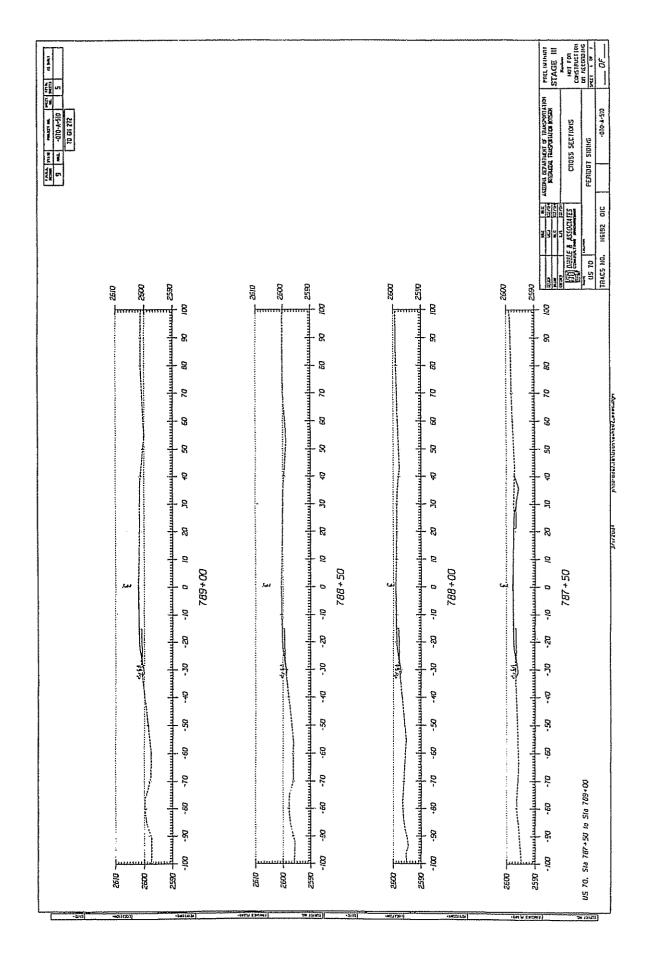
PERIDOT SIDING

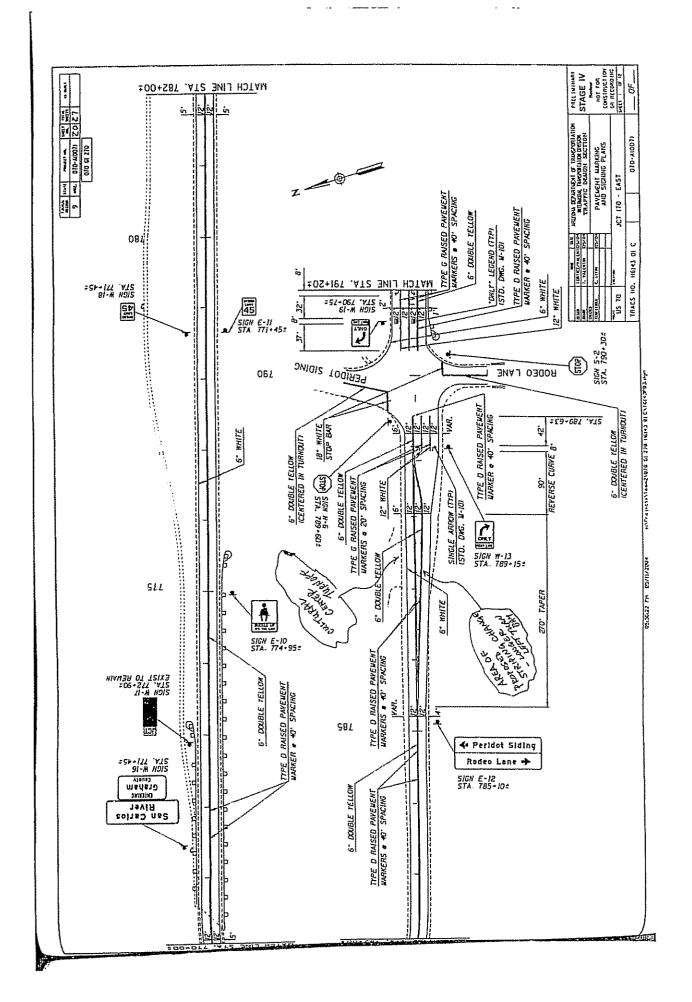




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SAN CARLOS APACHE TRIBE SAN CARLOS APACHE INDIAN RESERVATION SAN CARLOS, ARIZONA

RESOLUTION

NO: JUL-04-111

- WHEREAS, The San Carlos Apache Tribe is a Federally recognized Indian Tribe organized pursuant to the provisions of Section 16 of the Indian Reorganization Act of June 18, 1934, (48 Stat, 984); and
- WHEREAS, The San Carlos Apache Tribe is responsible for the general health and safety of Tribal members;
- WHEREAS, The San Carlos Apache Tribal Council at its meeting of February 6, 2004 voted to allocate \$5,000.00 per month from the Arizona fuel tax refund for transportation purposes;
- WHEREAS, Per the attached letter from Arizona Department of Transportation dated June 23, 2004, ADOT is requesting that the San Carlos Apache Tribe participate in the cost of additional improvements to U.S. Highway 70 that would benefit the Tribe; and
- WHEREAS, The Tribal Transportation Committee at its meeting of June 25, 2004 voted to approve the use of Arizona fuel tax monies in the amount of \$7,577.00, in accordance with ADOT's request;
- NOW THEREFORE BE IT RESOLVED THAT: The San Carlos Apache Tribal Council hereby approves the use of Arizona fuel tax monies in the amount of \$7,577.00, in accordance with ADOT's request.
- BE IT FINALLY RESOLVED THAT: The Chairwoman, Vice Chairman, or their designee are hereby authorized to execute all documents necessary to effect this Resolution, including any modification thereto.

CERTIFICATION

I, the undersigned Secretary of the San Carlos Apache Tribal Council hereby certify that the Tribal Council is presently composed of 11 members, of whom 10 constituting a quorum were present at a Regular Council Meeting hereto held on the 6th day of July 2004, and that the foregoing Resolution No. JUL-04-111 was duly adopted by a vote of 9 for; 0 opposed 0 abstained; of the Tribal Council pursuant to Article V, Section 1 (a) of the Amended Constitution and Bylaws of the San Carlos Apache Tribe effective February 24, 1954.

Ophelia T. James, Tribal Secretary

SAN CARLOS APACHE TRIBAL COUNCIL

APPROVAL OF THE SAN CARLOS APACH TRIBE ATTORNEY

I have reviewed the above referenced intergovernmental agreement between the DEPARTMENT OF TRANSPORTATION, INTERMODAL TRANSPORTATION DIVISION, and the SAN CARLOS APACHE TRIBE, and declare this agreement to be in proper form and within the powers and authority granted to the TRIBE under the laws of the United States, No opinion is expressed as to the authority of the State to enter into this agreement.

DATED this day of September, 2004

Tribal Attorney



TERRY GODDARD
ATTORNEY GENERAL

CIVIL DIVISION TRANSPORTATION SECTION WRITER'S DIRECT LINE: 602.542.8855

INTERGOVERNMENTAL AGREEMENT DETERMINATION

A.G. Contract No. KR04-1224TRN (**JPA 04-086**), an Agreement between public agencies, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the Undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining Parties, other than the State or its agencies, to enter into said Agreement.

DATED: October 7, 2004

TERRY GODDARD Attorney General

SÚSAN E. DAVIS

Assistant Attorney General Transportation Section

SED:mjf